IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 5464 of 2007()

CC.1074/2006 of J.M.F.C. - III, KOCHI

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PETITIONER/2ND ACCUSED

CAPTAIN JAMES JOSEPH,
MANAGING DIRECTOR, M/S.KOTTAYAM GOLDEN MARINE(P) LTD., THAZHATHANGADI P.O., KOTTAYAM- 686 004.

BY ADV. SRI.WILSON URMESE

RESPONDENTS: STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(REPRESENTING SUB INSPECTOR OF POLICE,
KOTTAYAM EAST POLICE STATION).

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007 ALONG WITH B.A.NOS.5466/07 AND 5472/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING

R. BASANT, J.

B.A.NOs. 5464, 5466 & 5472 OF 2007

Dated this the 6th day of September, 2007

ORDER

The common petitioner faces indictment in three separate prosecutions – all under Sec.138 of the Negotiable Instruments Act, launched by the same complainant. The cases were filed in the year 2006. Cognizance has been taken. The petitioner has not appeared before the learned Magistrate. Consequently, coercive processes have been initiated against the petitioner. He finds warrants of arrest issued by the learned Magistrate chasing him in these cases.

2. According to the petitioner, he is absolutely innocent. He has not been served with any notice. He was employed in a ship and he had no knowledge of the pendency of the proceedings. His absence was not wilful or deliberate. He has now come back. The petitioner is willing to surrender

before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is prayed that directions under Sec.438 and/or 482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general

directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. There shall be a further direction, in view of the peculiar facts and circumstances of this case, that the warrants of arrest issued against the petitioner in these three cases shall not be executed till 17/9/2007. In the meantime he must surrender and seek regular bail.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge